



How to Use the California Identity Theft Registry

A Guide for Victims of “Criminal” Identity Theft

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What Is Criminal Identity Theft?

Any act of identity theft is a crime under California law. “Criminal identity theft” is a label given to a particular type of identity theft. Criminal identity theft occurs when a suspect in a criminal investigation identifies himself or herself using the identity of another, innocent person. For example, the suspect may give the police another person’s name or identifying information (such as a driver’s license number or a Social Security number). This creates a criminal record in the name of the innocent person, making the innocent person a victim of criminal identity theft.

If someone has committed a crime while pretending to be you, you can clear your name. This guide is designed to help you do that. If you follow the steps outlined here, and as provided by California law, you can get the court order you will need to have your name entered into the California Identity Theft Registry.

Once you are entered in the Registry, you will receive notification of your status that you can present if you are questioned in the future. You can also request that notification be provided to prospective employers or others.

In addition, this process can help you clear up damaging, but mistaken, information that might interfere with your efforts to find housing or work.

You may want to get assistance from an attorney. See the Additional Resources section on page 10 for information on free and low-cost legal help.



How You May Have Become a Victim of Criminal Identity Theft

There are two main ways you might find your name involved with an identity thief in the criminal law system. One way you could get a criminal record is when an identity thief gets into trouble with law enforcement agencies while using your name. Another way you could get into trouble is when you get arrested because an identity thief has used your name while committing a crime.

A criminal record might be wrongly created in your name in one of the following ways:

- The thief was cited (in your name) for a crime.
- The thief was arrested (in your name) for a crime.
- The thief was prosecuted (in your name) for a crime. In other words, a county District Attorney or other prosecutor has filed a criminal complaint in court against the thief, but the complaint is in your name.
- The thief was convicted (in your name) of a crime.
- Your name has been somehow mistakenly associated with a record of a criminal conviction of some other individual.

In these instances, you can immediately ask a court for a Certificate of Identity Theft. See page 4.

What to Do in Case of Arrest

You might learn that you are victim of criminal identity theft if you are arrested for a crime committed by an identity thief who used your name. If you are arrested for a crime committed by an identity thief, you should use the form of petition known as the Petition to Seal and Destroy Arrest Records Pursuant to Penal Code Section 851.8.

You must first petition the arresting agency for a finding of factual innocence. This gives that agency an opportunity to voluntarily seal and destroy the erroneous records. You must do this before you can apply to a court for a court order (or certificate) that orders the agency to seal and destroy the records.

You should fill out the Petition to Seal and Destroy Arrest Records form, which you will find in the Sample Forms section at the end of this guide. Make several copies of it and give copies to the law enforcement agency that arrested you and to the District Attorney of the county that has jurisdiction over the crime for which you were arrested. (See Penal Code § 851.8, which can be found at www.leginfo.ca.gov/calaw.html.)

The arresting agency and the prosecutor have 60 days after receiving your petition to decide if they will agree that you are factually innocent and seal and destroy the records relating to you. If they do not act in 60 days, or if they deny your petition, you will have to go to court and ask the court for a Certificate of Identity Theft.



The Identity Theft Registry Application Process

The California Identity Theft Registry is only for victims of criminal identity theft. Once you provide the proper information and your information is confirmed, you will be entered in the statewide database.

You will find forms for applying for entry into the Identity Theft Registry at the bottom of the Criminal Identity Theft web page: <http://oag.ca.gov/idtheft/criminal>. Or you can get a registration application packet by calling the Identity Theft Hotline 1-888-880-0240.

The application process has six steps:

- Step 1 – Get court order/verification
- Step 2 – Get LiveScan fingerprints
- Step 3 – Complete registration application form
- Step 4 – Complete checklist for application
- Step 5 – Mail documents
- Step 6 – Receive registration notification

The challenge for many criminal identity theft victims is Step 1, getting a court order verifying that you are a victim of identity theft. This guide is intended to help you get that order from a judge stating that you are “factually innocent” of the crime on your record. The order is formally known as a *Certificate of Identity Theft: Judicial Finding of Factual Innocence*. We will refer to it here simply as a *Certificate of Identity Theft*.

After getting the Certificate of Identity Theft, you must continue with Steps 2 through 6 (outlined on pages 8-9). After the completion of all six steps, your name will be entered into the Identity Theft Registry.

The First Step: Getting a Certificate of Identity Theft

In most cases of criminal identity theft, you will have to go to court to get your situation cleared up. To do this you will need to know a few critical pieces of information.

First, you need to know the numbers assigned to the legal matter or case. The numbers will likely be any or all of the following:

- A citation number
- An arrest warrant number
- A court file number



For the purposes of this guide, all of these numbers will be referred to together as the Case Number. In rare instances, you will obtain a new case number when you ask a court for a Certificate of Identity Theft. When you know the case number you will be able to help the court clerks, the judge, and the prosecutor's office find the information you need—the papers and other information related to that case number.

Second, in most of these instances a California state court will be involved. It will be the court that is responsible for resolution of the case—the legal matter involving the identity thief and you. If a court is involved, you will need to know the location and telephone number of the clerk of that court. The court clerk is usually at the county courthouse. You will also need to the location of the courtroom where your hearing may occur.

Third, you should find out the name, mailing address and telephone number of the prosecutor, if any, assigned to the case. This may be a deputy district attorney who is prosecuting the identity thief. Be aware that the prosecutor may have its own, separate file number for your case.

Fourth, you should keep track of the formal name, address and telephone number of the police department or other law enforcement agency, if any is involved in the matter.

GETTING A CERTIFICATE OF IDENTITY THEFT BY INFORMAL REQUEST OF A COURT

If the person who stole and used your identity while committing a crime is arrested, you may be able to obtain the Certificate of Identity Theft from a court just by talking with (or petitioning) the judge in a court hearing during the thief's case. In each court a particular judge will make the determination of whether you are entitled to a Certificate of Identity Theft. You will need to find out if that judge will permit you to simply speak to him or her in open court (without preliminary paperwork) about the facts and circumstances that resulted in your problem.

To find this out, call the main clerk for the criminal court that is involved or call the clerk for the particular judge that will hold the hearing. Later in this guide (at page 7), the hearing process will be discussed further.

If the judge permits an informal procedure, you will only need to prepare a proposed Certificate of Identity Theft for the judge to sign after the hearing. Be sure to make a copy of the Certificate.

If the judge will not permit an informal procedure, you will have to use written documents to support your request for the Certificate of Identity Theft.

GETTING A CERTIFICATE OF IDENTITY THEFT BY FORMAL PETITION TO A COURT

If you need to use written documents to support your request for a Certificate of Identity Theft, you will have to follow the following general steps, which are discussed later in detail:

- Contact the clerk of the court and agree with the clerk to a date, time and location where the court will hold a hearing on your request. To locate a court, you can look at the



California Courts Web site at www.courts.ca.gov. You can also look up a court in local phone books.

- Prepare the following documents, examples of which are found in the Sample Forms section on page 10:
 - Petition Requesting Finding of Factual Innocence and Issuance of Certificate of Identity Theft
 - Proof of Service¹
 - Certificate of Identity Theft: Judicial Finding of Factual Innocence (CR-150)
 - Documents that support the Petition—as described in the Petition (declarations, warrants, complaints, etc.)
- Copy the documents. Make at least two copies of the Petition and the Certificate of Identity Theft (CR-150).
- File the original Petition with the court clerk. You will probably file the Petition either with the clerk assigned to the judge who will hold the hearing on your Petition or with a central intake clerk. The clerk will stamp your copy of the Petition to show that the original has been filed with the court. This is known as an endorsement stamp. You may make copies of the endorsement-stamped Petition for delivery to other parties.
- Arrange for the delivery of one endorsed-stamped copy of the Petition to the prosecutor, if there is one assigned to the case. Delivery may be performed by an adult who is not a party to the legal action. Keep the other copy for yourself.
- The person who delivers the Petition to the prosecutor must complete the Proof of Service showing that the Petition has been delivered to the prosecutor. Make a copy of the completed Proof of Service and file the original with the court. Again, the clerk will endorse-stamp your copy. Keep it for your records.
- Prepare for, and attend, the court hearing.
- Ask the clerk to have the judge sign the Certificate of Identity Theft, and ask the clerk to provide you with a certified copy of that Certificate of Identity Theft.

PREPARING THE PETITION SEEKING CERTIFICATE OF IDENTITY THEFT

The Petition (CR-150) does many things. It tells the court and the prosecutor that you are the person petitioning (asking) the court for a Certificate of Identity Theft. The Petition also tells the Court and prosecutor about the basic facts that support your request for the Certificate. And it informs them of the date, time and location of the court hearing of your Petition.

At the end of this guide, you will find a partially completed sample Petition.

SUPPLYING ADDITIONAL FACTS TO SUPPORT YOUR PETITION



This section will tell you how to prepare a statement of facts to provide additional support for your Petition. Paragraph 6 of the form Petition indicates that an attachment to the Petition may be provided. You may supply additional facts either (1) within, and as part of, paragraph 6 of the Petition, or (2) as a properly marked attachment to the Petition.² In either case, the statement of facts is considered part of the Petition.

The judge knows you're not a lawyer and won't punish you if your papers aren't perfect. But the judge needs to have enough facts to convince him or her that there is no reasonable cause to believe that you are guilty of the crime that was committed in your name.

Since each case is different, we can't tell you exactly what to include. Keep in mind that all statements of fact are statements made under oath. When you sign the Petition you will be agreeing that your statement of facts is true. Every individual who signs such a statement of facts is subject to penalties for any untrue statements made in it. Note the final statement in the Petition: "I declare under penalty of perjury under the laws of the State of California that the facts stated in this declaration are true and correct."

The focus of a statement of facts should be on facts. Avoid opinions, conclusions, or other statements about information that you do not know to be true, of your own personal knowledge.

Here are some examples of relevant, useful information to include in your declaration:

- A statement of facts that demonstrates and explains why you cannot be the perpetrator (for example, because you don't fit the description in the police report of the crime, or because you were out of town, at work, or with your friend at the time of the crime, etc.).
- Any other information that tends to show that someone stole your identity and used it when he or she was arrested for a crime.

DECLARATION BY ANOTHER INDIVIDUAL (WITNESS)

A declaration by a witness is similar to the statement of facts discussed above. A declaration is, essentially, a statement of facts made under oath. The form of Declaration included with this guide provides a format for such a declaration. The witness should (1) supply the specific facts that support your Petition, (2) date the Declaration, and (3) sign the Declaration.

Again, the focus of a declaration is on facts. The witness should avoid opinions, conclusions, or other statements about information that the witness does not know to be true, of the witness's own personal knowledge.

Useful information might be, for example, a statement by the witness that you were with the witness at the time the crime was committed by the identity thief. The conclusion that you could not have been the person committing the crime should NOT be stated by the witness, since a conclusion is not a fact.

PREPARING OTHER, INDEPENDENT DOCUMENTS



In addition, you can support your Petition with other, independent documents. Since these documents often contain highly confidential personal information, you should consider NOT filing these documents with the court. Rather, you should consider describing the documents in your Petition, with a promise that you will provide the judge with an opportunity to read the documents at the hearing on your Petition.

Documents that might support your Petition are described in the form Petition at the end of this guide. For example, such documents might be a copy of the police report you filed when you learned you were an identity theft victim. Or you may have a copy of the police report filed when the identity thief committed the crime in your name, which may show that the thief does not fit your physical description or that the crime occurred when you were out of town, etc.

You should be prepared, at the hearing of your Petition, to share copies of the documents with the prosecutor and with the judge.

PREPARING FOR YOUR HEARING

Begin by collecting and arranging in logical order originals of your identification documents: birth certificate, Social Security card, driver's license, identity card, passport, and any other documents that contain your personal information. Some of these documents should have your picture on them. You will show these documents to the judge at your hearing. You should not have to provide copies of these documents to anyone.

You should be prepared to give the judge typical personal information, such as name, current address, date and place of birth, height, weight, skin color, natural eye color, and natural hair color. You should also be prepared to show your driver's license, state identification card or passport, and your Social Security card.

FILLING OUT A (PROPOSED) CERTIFICATE OF IDENTITY THEFT

The Certificate is called the CR-150 form. At the top of the page, as indicated, clearly print or type your name, address, and contact information, including a telephone number, so the court can contact you if necessary.

Put the defendant's name in the blank spot after "People of the State California vs." since the action is in the defendant's name. You are NOT the defendant. You are the petitioner in this action because there is a conviction or arrest warrant in your name or with your personal information. (It is understood that with this Petition, you are showing that you did nothing wrong and are being confused with someone else.)

The police agency in the city or county where the offense occurred will know the warrant number for any arrest warrants in your name. If you are falsely arrested, you can get the warrant number from the police agency. If there is a conviction in your name, there may not be a warrant number.

The violation date is the date the crime, of which you are falsely accused, occurred.



Enter your name, gender, height, weight, hair color, eye color, race, age and date of birth, and driver's license or other identification number in the spaces indicated.

The booking number is a number that is assigned to people when they are arrested. If you've been arrested for another person's offense, you will have a booking number. Also, the identity thief may have a booking number from the original arrest. You can get the booking number from the local police agency. If you can't find the booking number, leave this space blank.

You also need to place your fingerprint in the right bottom corner of the form. The person taking the print must fill out the information next to the box. The court bailiff may take this fingerprint from you at the time the judge signs the order. If you are not appearing before the judge, you may need to go to a police agency to get fingerprinted. The way to do this is described below.

If you have presented enough information to the judge, the judge will check the appropriate boxes under the number (2) and will sign the form.

The Next Steps to Getting into the Identity Theft Registry

When you have your Certificate of Identity Theft from a court, you have completed the first step towards getting into the Identity Theft Registry.

STEP 2 – LIVESCAN FINGERPRINTS

You should be fingerprinted electronically at an official LiveScan fingerprinting site, such as a sheriff's office or police department. A listing of sites is available at <http://ag.ca.gov/fingerprints/publications/contact.php>.

When you call to schedule your appointment, ask for details on the fees being charged and your payment options. The LiveScan device will determine the total amount of fees to be collected or billed. There is no additional fee for the Identity Theft Registry.

If unable to make LiveScan fingerprint arrangements, you may have your fingerprints taken manually and mail the completed fingerprint card with the other required registration documents.

It is important that you write clearly and provide accurate information on your form because mistakes or omissions may result in the application being rejected by the device or the central site computer. To avoid such errors, you may wish before going to your LiveScan appointment to complete the applicant portion of the Request for LiveScan Service (applicant submission) form (BCII 8016).

The LiveScan operator will keep the original copy of the request form and return the second copy (Requesting Agency) and third copy (Applicant) to you. You will mail the second copy to DOJ at the conclusion of this process.

After you have had your fingerprints taken, proceed to Step 3.



STEP 3 – REGISTRATION APPLICATION FORM

Complete the Identity Theft: Application for Registration as Victim Form.

After you have completed the application form, proceed to Step 4.

STEP 4 – COMPLETE CHECKLIST FOR APPLICATION

- Completed Application for Registration As Victim Form
- Court Order
- Second Copy – LiveScan Service Form (BCII-8016)

STEP 5 – MAIL DOCUMENTS

Mail the documents listed above to:

State of California
Department of Justice
BCIA/Command Center Rm G210
P. O. Box 903417
Sacramento, CA 94203-4170
Attn: ID Theft Registry

STEP 6 – REGISTRATION NOTIFICATION

You will be registered as a victim of identity theft in the Identity Theft Data Base after the Department of Justice verifies the information you submit, including your fingerprints, with the California Department of Motor Vehicles.

You and the individuals or agencies you designate will be notified of your registration via certified letter.



Additional Resources

For more information on criminal identity theft and court procedures, see the following:

“Fact Sheet 17g: Criminal Identity Theft,” Privacy Rights Clearinghouse
www.privacyrights.org/fs/fs17g-CrimIdTheft.htm

Free and Low-Cost Legal Help, California Judicial Council
www.courts.ca.gov/selfhelp-lowcosthelp.htm

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